



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
BORIS S. STANLEY }

For Appellant: Lawrence Martin Cohn
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Joseph W. Kegler
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Boris S. Stanley against a proposed assessment of additional personal income tax in the amount of \$276.52 for the year 1964.

Appellant initially raised two issues in his appeal: (1) respondent's disallowance of a claimed casualty loss deduction of \$2,787.94, and (2) respondent's alleged failure to reduce appellant's gross business income by \$2,783.24, the amount of an income item which appellant says was erroneously included twice on his return. In its brief respondent informed us that appellant's income was in fact reduced by \$2,783.24, and since appellant did not press this issue in his reply, we will take it as conceded that appellant has received a reduction in his income equal to the full amount of the overstatement. Consequently, the only issue we must decide is the propriety of the claimed casualty loss deduction.

Appellant alleges that on or about March 26, 1964, while he and his family were away on vacation, a water pipe in his residence burst, causing large amounts of water to flood parts of the house. The water damaged

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floors, underlay, carpeting,, walls, heating vents, conduits and pipes. After securing the advice of experts on the extent of the damage and the cost of repairing it, appellant decided that the -damage approximated \$10,000. Appellant sued his insurer for that sum but settled out of court for \$441.00, the amount of appellant's court costs and expenses for partial repairs and expert fees.

On both his federal and state income tax returns for 1964, appellant claimed a casualty loss deduction of \$2,787.94 for the damage arising from the broken water pipe. Appellant arrived at this figure by taking what he considered to be a reasonable proportion of the damage he didn't repair (\$2,500.00), adding to it his out of pocket expenses for repairs and expert fees (\$387.94), and subtracting the \$100 limitation imposed by section 165(c)(3) of the Internal Revenue Code and section 17206, subdivision (c)(3) of the Revenue and Taxation Code. After auditing appellant's federal return, the Internal Revenue Service disallowed the casualty loss deduction, apparently on the theory that the loss was not from a "casualty." On the basis of the federal action, respondent Franchise Tax Board also disallowed the casualty loss deduction and this appeal followed.

It is well established that a Franchise Tax Board determination based on a federal audit report is presumptively correct and must be shown by the taxpayer to be erroneous. (Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959; Anneal of Henrietta Swimmer, Cal. St. Bd. of Equal., Dec. 10, 1963.) In the present case, appellant has offered no evidence to support his allegation that he suffered a casualty loss in the amount of \$2,787.94. Consequently, appellant has failed to carry his burden of proof and respondent's determination must be sustained.

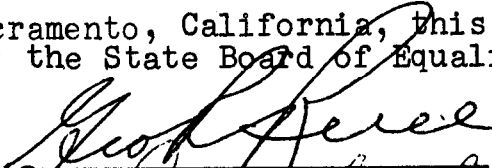
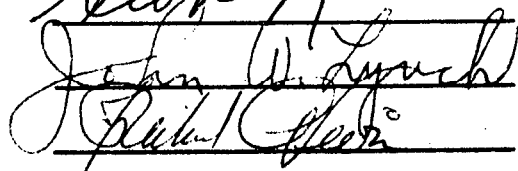

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

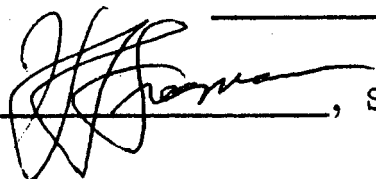
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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Boris S. Stanley against a proposed assessment of additional personal income tax in the amount of \$276.52 for the year 1964 be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of December, 1970, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member

ATTEST:


_____, Secretary

